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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,403	11/21/2003	Marc Vathauer	Mo7826/LeA 36,448	3335
34947	7590	04/11/2006	EXAMINER	
LANXESS CORPORATION 111 RIDC PARK WEST DRIVE PITTSBURGH, PA 15275-1112			WOODWARD, ANA LUCRECIA	
			ART UNIT	PAPER NUMBER
			1711	
DATE MAILED: 04/11/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 10/719,403	Applicant(s) VATHAUER ET AL.	
	Examiner Ana L. Woodward	Art Unit 1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on February 2, 2006, January 9, 2006
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 4, 7-9, 11, 12, 15 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 7-9, 11, 12, 15 and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. Claims 1, 2, 4, 7-9, 11, 12, 15 and 16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification, as originally filed, fails to provide express support for the provisos “EPR or EPDM rubber based graft polymers are excepted” and “wherein said molding composition does not consist of polyphenylene ether or modified polyphenylene ether” per claim 1 and further for the characterization of the claimed mineral particles as “non-carbon based” per claim 2. Since no express support can be found for said new limitations, such are deemed New Matter.

2. Claims 1, 2, 4, 7-9, 11, 12, 15 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 9 and 11, it is unclear if or how the genus “(meth)acrylic C1-C8 alkyl esters” distinguishes over the subsequently recited alkyl ester species.

In claim 1, it is unclear as to whether or not the first and second monomers can be one and the same. In this regard, it is noted that both monomers recite the same (meth)acrylates.

In claim 1, line 9 “tert-butyl” is indefinite as to scope and meaning.

Art Unit: 1711

In claim 1, lines 10 and 13, “or mixtures thereof” constitutes improper Markush group format in view of the disjunctive “or” and further appears redundant given the antecedently recited “at least one monomer”.

In claim 1, last line, “modified” is indefinite as to scope and meaning.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 4, 7-9, 11, 12, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 2002/0099136 A1 (Park et al).

Park et al disclose a polyamide composition comprising (a) 50-95 parts by weight of a polyamide, reading on the presently claimed polyamide, (b) 1-45 parts by weight of an impact modifier, such as, an all acrylic core-shell type rubber, reading on the presently claimed graft polymer, (c) 0.1-20 parts by weight of a plasticizer, (d) 0.001-5 parts by weight of a thickener, (e) 0.5-10 parts by weight of an ionomer and (f) a filler component, such as, carbon black, reading on the presently claimed electrically conductive carbon.

In essence, the disclosure of Park et al differs from the present claims in not expressly exemplifying a graft polymer, as presently required, as the impact modifier component. In this regard, it is again noted that core-shell type rubbers, such as all-acrylic core-shell type rubbers [0034], can be used as suitable impact modifiers. Accordingly, it would have been obvious to

Art Unit: 1711

one having ordinary skill in the art to have employed a core-shell type rubber, in lieu of the exemplified EPM graft copolymers of the reference, with the reasonable expectation of success.

5. Claims 1, 2, 4, 7-9, 11, 12, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 5,756,576 (Bruls et al) in combination with U.S. 5,484,838 (Helms et al).

Bruls et al disclose a composition comprising A) 5 to 79% by weight of a graft copolymer comprising a rubber substrate having grafted thereon vinyl aromatic monomer units and monomer units chosen from alkyl (meth)acrylates and (meth)acrylonitriles, reading on the presently claimed graft polymer, B) 90 to 20% by weight of a thermoplastic polymer with polar groups, such as polyamide, reading on the presently claimed polyamide, and C) 1 to 50% by weight of a terpolymer, not precluded from the present claims. In addition, customary additives embracing the presently claimed electrically conductive carbon, such as conductive fibers and reinforcing fibers such as carbon fibers, can be further incorporated into the polymer composition (column 5, lines 18-22).

The disclosure of Bruls et al differs, in essence, from the present claims in not expressly exemplifying the use of an electrically conductive carbon component. In this regard, attention is directed to the similar-such teachings of Helms et al. From Helms et al, the use of an electrically conductive carbon black in analogous polymer compositions is well known. Accordingly, it would have been obvious to one having ordinary skill in the art to have formulated the compositions of Bruls et al with an electrically conductive carbon black, as the electrically conductive carbon component, with the reasonable expectation of success. Absent evidence of unusual or unexpected results, no patentability can be seen in the presently claimed subject matter.

### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1, 2, 4, 7-9, 11, 12, 15 and 16 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Applications 10/737,321 and 10/796,525. Although the conflicting claims are not identical, they are not patentably distinct from each other because they contain overlapping subject matter.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Response to Amendments***

8. Applicant's amendments filed February 2, 2006 have obviated the rejection based on EP '386.

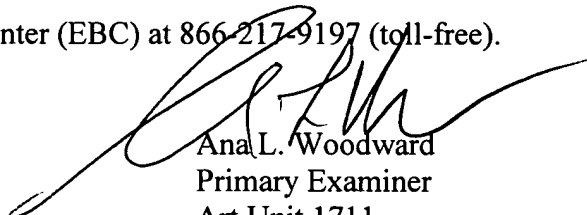
### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ana L. Woodward whose telephone number is (571) 272-1082. The examiner can normally be reached on Monday-Friday (8:30-5:00).

Art Unit: 1711

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on (571) 272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ana L. Woodward  
Primary Examiner  
Art Unit 1711

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